



Army National Guard (Michael J. Minardi)

# The National Guard and Homeland Defense

By ROBERT A. PREISS

**J**oint staff officers and force commanders involved in joint homeland security operations inside the United States will need a thorough understanding of the National Guard. They may have mobilized Guard units operating under their command and control. They may need to coordinate with a parallel Guard operation conducted under the authority of a Governor. They may even provide forces to support a state Guard already engaged in an operation.

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In Department of Defense (DOD) terminology, homeland security encompasses both homeland defense and military support to civil authorities. Homeland defense encompasses those traditional military functions undertaken to protect the United States from external threats. Military support to civil authorities (MSCA) refers to assistance to civilian governmental entities—Federal, state, or local—that the services may provide to help manage a crisis, attack, or calamity. This article addresses potential joint force interactions with the Guard in both homeland defense and MSCA missions.

The National Guard is a unique military organization. Its dual state

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and Federal nature can confuse even its members. Sometimes Guardsmen are paid and commanded by the Federal Government, sometimes by state governments. Most often they are federally funded but state controlled. While this may seem a jumble of cross-ing authorities, it is actually a tried and proven structure that is flexible and responsive.

After a historical overview, this article explores each status under which the National Guard operates, gives examples of these three options at home and overseas, and suggests implications for joint homeland security. The flexibility and responsiveness resulting from these duty options are potent tools for joint force commanders and civilian leaders as America adjusts to the post-9/11 security environment.

## History, Federalism, and the Constitution

Two realities are crucial to understanding the nature and capabilities of the National Guard. First, while Army and Air Guard units are Reserve components of the Army and Air Force, they are first and foremost the militia of the states that own them. Second, state governments are sovereign entities under the Constitution.

Like their counterparts in the other Reserve components, members of the Army and Air National Guard are citizen soldiers. Most hold civilian vocations but dedicate at least one weekend a month plus two weeks a year to wearing a uniform and training to augment the Army or Air Force.

Unlike Reservists, Guardsmen do nearly all training and some operations under the command and control of state governments. In 54 states and territories, including the District of Columbia, National Guard forces are under the leadership of two-star adjutants general usually appointed by the Governors, who are the commanders in chief in their states. The President is the Commander in Chief of the militia only when it is in Federal service. Unless ordered to Federal active duty, a Guardsman's chain of command stops at the Governor's mansion.



Rhode Island Governor and Adjutant General greeting Guardsman returning from Iraq.

143<sup>rd</sup> Air Wing (Janean Miller)

Although immediately available to states for domestic emergencies, a relatively small percentage of the National Guard is employed in yearly state call-ups. Consequently, Guardsmen spend most duty time training to Army or Air Force standards in case they are mobilized to augment the active components. Most funding thus comes from the Federal Government.

While training is focused on meeting Army and Air Force performance standards for Federal wartime missions, it simultaneously supports

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state missions. Warfighting skills such as leadership, communication, and disciplined teamwork as well as technical skills such as operating vehicles and aircraft are honed for combat but have proven to be just the abilities needed when Governors call for help.

The purposes behind this unique state/Federal institution are found in some of the fundamental threads of American history. The Guard is America's oldest military force, tracing its

roots to 1636, when the Massachusetts Bay Colony first organized the existing militia companies of several towns into larger regiments. After the Revolution, the founding fathers explicitly recognized the importance of maintaining the citizen-soldier tradition and established it, and the attendant state and Federal authorities, into the militia clause of the Constitution:

*The Congress shall have power . . . to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions [and] provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.*

Much of the rationale for the modern structure is based on the Nation being a union of sovereign states. The Constitution preserves the rights and powers of states by explicitly enumerating the powers of the Federal Government and declaring that all others are reserved to the states. This federalism is central to American democracy. The apportionment of authority over today's organized militia between the states and the Federal Government works to the benefit of both.

The state/Federal construct benefits states by preserving their authority and providing them immediate access to a trained, disciplined, organized, and equipped force for domestic emergencies such as civil disturbances, natural disasters, and terrorist attack. The sovereignty of states and their ability to conduct independent

military operations have significant practical implications for future joint force commanders and staffs operating in the homeland, and these are addressed below.

The Guard construct benefits the Federal Government in several ways. First, it provides a cost-effective Reserve. The Army National Guard provides 38 percent of total Army force



Multi-Levels of Command and Missions			
	State Active Duty	Title 32	Title 10
Command and Control	Governor	Governor	President
Where	IAW state law	Inside the U.S.	Worldwide
Pay	State	Federal	Federal
Mission Types	IAW state law (riot control, emergency response, etc.)	Training and other federally authorized	Overseas duty; domestic WMD; insurrection, invasion, etc.
Discipline	State military codes	State military codes	UCMJ
Support Law Enforcement	Yes	Yes	Restricted

structure and 30 percent of total personnel for 14 percent of the nonprocurement budget. The Air National Guard provides 34 percent of total Air Force aircraft and 20 percent of Air Force personnel for 11 percent of the nonprocurement budget.

Second, with potent state and community ties, the Guard attracts public (and thus political) support for a robust national defense. At a time when ever fewer Americans have direct military experience, the Guard's state and local connections help assure broad-based support through a visible presence and direct community involvement on the hometown level. There are some 3,200 National Guard facilities in 2,700 communities. The hometown armories are brick and mortar connections from the local level to national defense. There is at least one facility for most of the 3,000 counties. The average congressional district is home to a thousand Guardsmen.

Third, the dual state and Federal access to the National Guard provides taxpayers an additional leveraged return on defense investment. Personnel and equipment in the Guard stand ready for two contingencies—domestic emergency or overseas mission—rather than one.

Finally, the state connection provides a means by which Federal military assets can be employed on the state level to address joint state/Federal interests such as fighting drugs or countering the effects of weapons of mass destruction.

The constitutionally mandated Federal part in organizing, arming, disciplining, and governing the Guard are accomplished by the National Guard Bureau (NGB), a joint organization of the Departments of the Army and the Air Force. By statute, the bureau is the channel by which these services communicate with the states and territories on all matters pertaining to the National Guard.

Beyond these intergovernmental and community relations aspects, however, joint force commanders and

### rivers flood and Guardsmen organize sandbag teams and rescue victims from rooftops by helicopter

staff must also understand the training and operational responsiveness and flexibility of the National Guard. That requires understanding that its activities generally fall into state active duty, Federal active duty, or DOD-funded, state-executed training and operations under Title 32 of the U.S. Code.

### State Active Duty—Emergency Response Missions

Calling out the Guard has become a metaphor for extraordinary efforts to deal with crises. It happens half a dozen times a year in the average state. As a result, National Guard headquarters known as state area commands have tremendous background in calling and employing forces large and small for domestic operations in support of civil authorities. This level of

practical experience exists nowhere else in the military. Guardsmen in this status are funded solely by the state and governed by state military laws. If they use federally owned equipment, the Federal property and fiscal officer for that state, reporting to the National Guard Bureau, ensures that the state reimburses the Federal Government accordingly.

National Guard activations for state emergency response missions are most frequently precipitated by a natural disaster. A tornado strikes and Guard bulldozers clear the streets. Hurricanes threaten and the Guard assists in evacuation before and recovery after. Rivers flood and Guardsmen organize sandbag teams and rescue victims from rooftops by helicopter. These can be large operations. For example, West Virginia battled recurring floods in 2001. At one point the adjutant general had over 4,000 Guardsmen from four states employed there for several weeks.

When a state facing a domestic emergency needs additional assets—such as during a large-scale Federal mobilization of its units for overseas deployment—it may borrow Guard capability. The ability to share assets across state lines has been made nearly effortless through emergency management assistance compacts, which standardize the exchange and reimbursement of response capabilities, including Guard units. That proved effective in West Virginia.

Unlike their Federal military counterparts, Guardsmen operating under the command and control of state authorities can directly help enforce the law. Federal forces generally cannot be employed for that purpose under the Federal *posse comitatus* law, while state-controlled forces can. This ranges from providing an extra visible security presence at large events to partnering with police to quell riots and restore order. When protesters opposing the World Trade Organization rioted in Seattle in 1999, Guardsmen helped restore order.

The recovery and security operations the New York and New Jersey National Guard mounted after the 9/11 terrorist attacks were by far the largest recent emergency response missions under state active duty. The Guard met virtually all the military support needs of the civil authorities of the state and city of New York. Its heavy construction equipment arrived at Ground Zero immediately. Guardsmen deployed throughout the city to help police maintain order and secure key locations. The ability to respond rapidly to the needs of the Governor put assets where they were needed.

Other Governors also called the Guard to state active duty to bolster security. California Guardsmen secured the Golden Gate Bridge while Florida Guardsmen protected ports. Members in several states were deployed to secure nuclear power plants and other assets.

While this ability to respond to Governors is a powerful tool for protecting lives and property, it also has an implication for military readiness. A unit completing a demanding tour of state active duty may not have sufficient readiness to perform its Federal wartime mission. The National Guard Bureau therefore monitors both state call-ups of Guard assets and unit readiness reports. Its oversight of the forces and equipment in each state makes it a valuable coordination center when assets are needed across state lines. As a result, the bureau is able to maintain DOD situational awareness about overall Guard capabilities and operations. It is gearing up to provide that information to U.S. Northern Command. This NGB capability becomes particularly valuable to any joint force commander tasked to lead Federal military operations as part of a homeland security mission in the continental United States.

Every state has the constitutional prerogative and capacity to conduct domestic military operations. As elected officials, Governors have a powerful political incentive to respond visibly and decisively to any threat to lives and property. Any active duty joint force deployed in an incident involving a weapon of mass destruction,



for example, would almost certainly arrive to find that the National Guard has been ordered by the Governor and the operation is already under way. With many years of working with states, the National Guard Bureau can help avoid conflicts, enhance unity of effort, and contribute to mission accomplishment.

Because state governments are sovereign, the interactions of Federal forces with those under state control require tact and sensitivity to political realities and prerogatives that do not normally factor into strictly U.S. operations. Major General Timothy Lowenberg, adjutant general of Washington state and a Guard expert on homeland security, said in an August 2002 interview, "Active duty officers can best understand this if they think of the National Guard as extremely friendly and interoperable allied forces."

### Mobilization and Calls to Federal Service

Title 10 of the U.S. Code contains several provisions under which the National Guard can be brought to Federal active duty for various operational purposes and durations inside the United States. Units may be ordered under a Presidential Reserve call-up to respond to a use or threatened use of a weapon of mass destruction. Otherwise, this authority is limited inside the United States. Presidential call-up

cannot be used to suppress insurrections, repel invasions, enforce Federal laws, or assist civil authorities in responding to disasters. The Department of Defense has recommended removing this limitation.

These activities are specifically provided for elsewhere. Both units and members can be called into Federal service by a Presidential call-up under Title 10, chapter 15, section 12406 to enforce Federal laws or suppress insurrections, domestic violence, unlawful combination, or conspiracy—sometimes called selective mobilization. In Graphic Hand in 1970, the Guard was employed under this authority to augment the postal service during a strike.

Partial mobilization is free of the domestic employment limitations of a Presidential Reserve call-up but requires congressional approval or a Presidential declaration of national emergency. Federalizing or mobilizing the Guard for Federal active duty at home has advantages as well as disadvantages.

Once a unit is ordered to Federal active duty, its state command relationships are severed. The cost and responsibility for administrative and logistic support fall to the gaining Federal command. If other Federal military units are involved, unity of command is enhanced. Lost, however,

193<sup>rd</sup> Special Operations Wing (Matt Schwarz)



D.C. Air National Guard F-16s.

U.S. Air Force (Dennis Young)

are the Guard's state and local connections as well as its state-derived exemption from *posse comitatus*.

The Governor of California called out the National Guard in the Los Angeles riots in 1992. Happy to have the Federal Government pay their bill,

### **in response to Hurricane Andrew, some 20,000 active duty troops worked with a state force of 6,000 Florida Guardsmen**

state officials agreed that the Guard should be transitioned from state to Federal duty. That placed the Guard along with participating marines under a single Federal commander. Law enforcement officials involved, however, noted problems. First, their own connectivity was immediately hampered when habitual relationships with the

National Guard command structure were replaced with a new Federal military command unfamiliar with the local situation, personalities, and sensitivities. There was greater hindrance to the mission when, as a result of Federal *posse comitatus* restrictions, the Guard could no longer perform many law enforcement support tasks in the riot area.

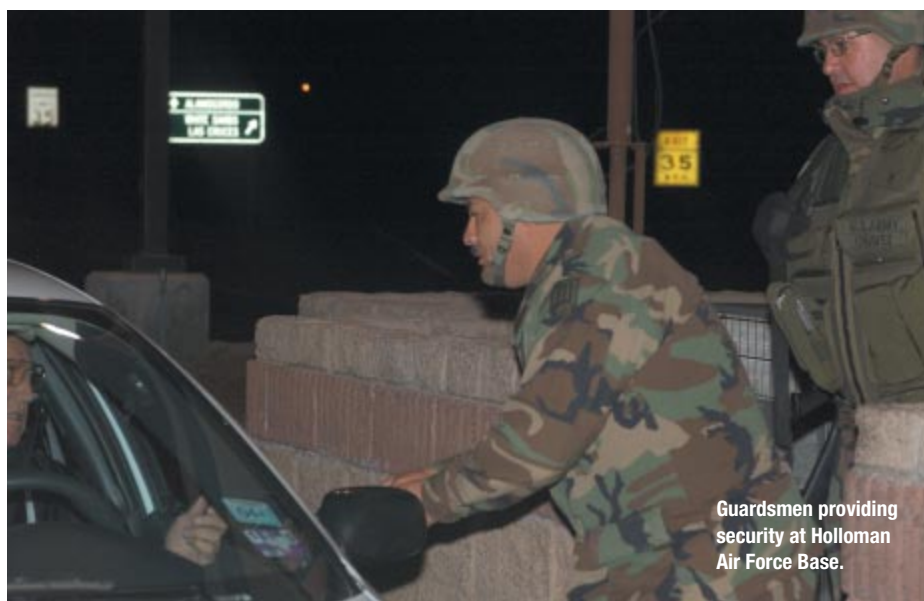
Four months later, however, in response to Hurricane Andrew, some 20,000 active duty troops worked cooperatively with a state force of 6,000 Florida Guardsmen, who remained in state status to preserve their law enforcement support capability.

In 2002, some 1,700 Guardsmen were tasked to assist the Immigration and Naturalization Service and the Customs Service in bolstering security along national borders. Pentagon officials considered using Title 32 duty,

whereby Guardsmen would remain under state control so they could legally perform law enforcement tasks. In the end, because the mission supported Federal agencies and involved a Federal responsibility—border security—the decision was made to mobilize the Guardsmen to Federal Title 10 duty. Subsequently, the National Governors Association was critical and published a statement that such duties should be performed using Title 32.

### **DOD Funded, State Executed**

Mobilizations to Federal active duty and call-ups to state active duty are relatively infrequent during a career. Guardsmen spend most duty time in normal training and operations governed under Title 32. They perform at least 39 days of training a year—typically 2 days a month plus 15 days of



Guardsmen providing security at Holloman Air Force Base.

49th Communications Squadron (Erik J. Somppi)

annual training. In practice, most Guardsmen perform substantially more days because of additional training, preparation, and maintenance. In this capacity, the National Guard in each state remains under the state chain of command. The Governor is commander in chief. The state adjutant general is the top military officer.

The Federal Government, through the Army and Air Force, sets the individual and collective training standards and provides the money and equipment to accomplish them in accordance with the militia clause of the Constitution, under which the Federal Government is empowered to do the “arming” and “disciplining” (prescribing doctrine and standards) of the militia. States execute the training.

States also appoint the officers, albeit subject to the required Federal recognition extended through the National Guard Bureau. As a consequence, Guard officers hold both a Federal and a state commission. All Guardsmen, officer and enlisted, take an oath to uphold both the U.S. and state constitutions.

Because the National Guard remains under state command and control in Title 32 duty, it is able to perform law enforcement tasks free of the restrictions imposed on active duty units by the *posse comitatus* law. At the same time, however, Title 32

duty is funded by the Federal Government. As a result, in addition to training, this federally-funded/state-executed status has been used to employ the Guard for missions of both Federal and state interest.

This ability comes into practical application with National Guard counterdrug operations. Congress has explicitly authorized states to employ

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Guard assets in civilian law enforcement actions in the war on drugs under Title 32. This support includes information analysis, ground reconnaissance and surveillance, and aerial observation. The law authorizes up to 4,000 Guardsmen for this mission. Current funding provides just under 3,000 nationwide. The unique advantage of this program is that the Guardsmen perform counterdrug duties while remaining members of their combat units and training there. The Nation gets both military support to law enforcement and a ready deployable combat asset. This model could be expanded beyond the counterdrug arena to counterterrorism.

Title 32 duty was the tool of choice for employing the National Guard to secure 442 commercial airports in 52 states and territories following 9/11. The President asked Governors to take this step and provided the money in order to reassure the traveling public and help the economy. Some Guardsmen were on duty the next day. Some 7,000 Army and Air Guard were performing at all of the listed airports within a week, operating with Federal funding but under the command and control of the Governors.

Weapons of mass destruction civil support teams also operate as federally resourced, state-controlled assets under Title 32. These full-time, 22-member joint Army and Air National Guard units are trained and equipped with modern technology to assess a chemical, biological, or radiological attack, advise the on-scene incident commander, and facilitate the arrival of additional assets.

The Guard also has a record of contributing to the strategic defense of the United States while remaining under a state chain of command. During the Cold War, up to 82 batteries of Army Guardsmen manned antiaircraft artillery and Nike missile sites defending against the Soviet bomber threat. A special mobilization compact transitioned the Guardsmen to Federal active duty immediately when targets appeared on their radar screens.

Today, the Guard still uses Title 32 duty for homeland defense. First Air Force, comprised mostly of Air National Guardsmen, provides air sovereignty and air defense for the continental United States. Divided into three sectors, it uses its attached wings to scramble fighter jets to intercept threat or unidentified aircraft entering U.S. airspace. It has pioneered a particularly innovative way to leverage state-controlled forces for Federal military purposes. To get the most flexible use of the assets, pilots and aircraft remain in their state-controlled training status unless actually scrambled for an intercept. Air Guard fighter units assigned to this mission perform their training



Florida National Guard  
loading hurricane  
relief supplies.



1st Combat Camera Squadron (Sarayu Phinong)

and even sit alert in their normal Title 32 training status under state command and control either during drill or annual training. When they launch or divert to intercept a bogie, the pilots transition to Federal Title 10 orders and respond to a Federal chain of command to execute the mission. In this way, the forces are only federalized for the Federal portion. Training, administration, maintenance, and other aspects are performed under state control using Guard resources.

Regulatory and policy obstacles inhibit the integration of state-controlled forces with Federal active duty forces. The code of Federal regulations and DOD directives pertaining to military support to civil authorities restrict Federal forces from being under the command and control of officers in state status. Such obstacles to unity of effort may warrant review in light of the new domestic security environment. Changing these regulations could provide for more flexible employment of military assets using the gamut of command relationships from tactical control to combatant command.

Service under Title 32, in which Guardsmen remain under the command and control of state governments but conduct federally prescribed and resourced training, has traditionally been exclusively for that training purpose. Increasing use for operational purposes in recent years has evolved a unique and effective optional tool for decisionmakers in meeting certain requirements.

Based on the citizen-soldier tradition rooted in the founding of the Nation and codified into the militia clause of the Constitution, today's National Guard remains a unique state/Federal construct. The sovereignty of states and their ability to conduct independent military operations are essential parts of American federalism that stem from the Constitution, which all military officers are sworn to defend.

The state/Federal structure provides three operational benefits: experience, responsiveness, and flexibility.

National Guard forces offer experience based on their relatively frequent employment in state operations in support to civil authorities ranging from disaster relief to law enforcement. They also have homeland defense experience such as missile defense and air sovereignty operations. They offer responsiveness in that they are near every potential target in America and can be on-scene in hours. They offer flexibility in that the three possible duty options provide a broad array of capabilities for meeting any threat. Underlying these benefits and essential to them all is the readiness derived from training, organizing, and resourcing for overseas deployability and combat. These issues are crucial to the joint force commander and staff seeking to understand and work with the National Guard inside the United States.

**JFQ**